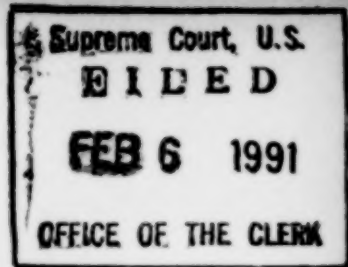


(3)

No. 90-681



IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1990

BARBARA HAFER,

*Petitioner*

*v.*

JAMES C. MELO, JR. AND CARL GURLEY, ET AL.,

*Respondents*

**RESPONSE TO ANSWER TO  
PETITION FOR WRIT OF CERTIORARI**

Jerome R. Richter  
BLANK, ROME, COMISKY  
& MCCAULEY  
1200 Four Penn Center Plaza  
Philadelphia, PA 19103  
(215) 569-5607  
*Counsel of Record*

Goncer M. Krestal  
BLANK, ROME, COMISKY  
& MCCAULEY  
1200 Four Penn Center Plaza  
Philadelphia, PA 19103  
(215) 569-5605  
*Counsel for Petitioner*

No. 90-681

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

October Term, 1990

---

BARBARA HAER,

*Petitioner*

v.

JAMES C. MELO, JR. AND CARL GURLEY, ET AL.,

*Respondents*

---

**RESPONSE TO ANSWER TO  
PETITION FOR WRIT OF CERTIORARI**

---

Respondents' Answer fails to meet the principal arguments presented in support of petitioner's request for a Writ of Certiorari.

1. *The decision of the Court of Appeals* that petitioner, Barbara Haer, was subject to suit under 42 U.S.C. §1983 for actions taken in her official capacity as Auditor General of the Commonwealth of Pennsylvania in firing respondents, is *contrary to the express holding of this Court in Will v. Michigan Dept. of State Police*, 109 S. Ct. 2304, 2312 (1989), that "... neither a State nor its officials *acting in their official capacities* are 'persons' under Section 1983." (Emphasis added.) It is therefore not relevant that the Court of Appeals for the Third Circuit was, as characterized by respondents (Answer, p. 3-4),

"satisfied that [respondents] had adequately explained to the District Court that their claims for monetary damages were asserted against [petitioner] in her individual capacity only." In fact, the District Court was not persuaded that respondents' claims were against petitioner in her individual capacity and held, to the contrary, that respondents' actions were against petitioner for acting in her official capacity.

2. State officials, as the States themselves, should not be subject to threats of law suits under 42 U.S.C. §1983 to recover monetary damages in connection with their conduct in the management of state governments, particularly acts relating to the discharge of state employees involved in an illegal job-buying scheme. The State can only act through its elected and appointed officials, and the possibility of being required to expend personal funds in defending charges arising out of conduct necessary to the efficient management of the State would have a decided chilling effect upon the good faith exercise by these persons of their governmental functions and would discourage the effectuation of appropriate employment standards.

Any infringement by a State of the rights protected by 42 U.S.C. §1983 in the management of its affairs can be remedied by the grant of prospective relief. There is no necessity to penalize the State officials through whom the State must act.

A Writ of Certiorari should be issued to the United States Court of Appeals for the Third Circuit to settle this important issue of Federal-State relations.

Respectfully submitted,

Jerome R. Richter  
BLANK, ROME, COMISKY  
& MCCAULEY  
1200 Four Penn Center Plaza  
Philadelphia, PA 19103  
(215) 569-5607  
*Counsel of Record*

Goncer M. Krestal  
BLANK, ROME, COMISKY  
& MCCAULEY  
1200 Four Penn Center Plaza  
Philadelphia, PA 19103  
(215) 569-5605  
*Counsel for Petitioner*